

Michael A. Cohen, OSB #965776
Email: mcohen@schwabe.com
SCHWABE, WILLIAMSON & WYATT, P.C.
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204
Telephone: 503-222-9981
Facsimile: 503-796-2900

Nika Aldrich, OSB #160306
Email: naldrich@schwabe.com
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 5th Ave., Suite 3400
Seattle, WA 98101
Telephone: 206-622-1711
Facsimile: 206-292-0460

(Additional Counsel Shown on Signature Page)

*Of Attorneys for Plaintiffs/
Counter-Defendants*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

**TREVARI MEDIA LLC and
UNDERWATER INVESTIGATIONS
LLC,**

Plaintiffs/Counter-Defendants,

vs.

**JOSHUA CANTU, d/b/a JUKE MOTION
PICTURES,**

Defendant/Counter-Claimant.

No. 6:23-cv-01879-MTK

**PLAINTIFFS' AMENDED ANSWER TO
DEFENDANT'S SECOND AMENDED
COUNTERCLAIMS**

**PLAINTIFFS' AMENDED ANSWER TO DEFENDANT'S
SECOND AMENDED COUNTERCLAIMS**

Schwabe, Williamson & Wyatt, P.C.
Attorneys at Law
1211 SW 5th Avenue, Suite 1900
Portland, OR 97204
Telephone 503-222-9981
Fax 503-796-2900

Plaintiffs Trevari Media, LLC (“Trevari”) and Underwater Investigations LLC (“UI”) (collectively, “Plaintiffs”) answer Defendant Joshua Cantu’s (“Defendant” or “Cantu”) Second Amended Counterclaims as follows:

121. Plaintiffs are unable to admit or deny the allegations in Paragraph 121 as they are vague, ambiguous, and unintelligible. Defendant failed to identify what response or affirmative defense referenced in Paragraphs 1 through 120 of Defendant’s Amended Answer to the First Amended Complaint is pled in this paragraph as a basis of its Counterclaims. To the extent any response is required, Plaintiffs deny the allegations in Paragraph 121.

122. Admitted.

123. Admitted.

124. Admitted.

125. Admitted.

126. Admitted

127. Admitted.

DEFENDANT’S FIRST COUNTERCLAIM AGAINST TREVARI FOR BREACH OF ORAL CONTRACT

128. Trevari realleges and incorporates by reference the responses of the preceding Paragraphs 121 – 127 of Defendant’s Counterclaims as though fully set forth herein.

129. Denied.

130. Denied.

131. Trevari admits to the extent that the six videos listed in Exhibit E to the Amended Complaint filed on February 21, 2024 are subjects of the instant action and denies all remaining allegations in Paragraph 131.

132. Trevari lacks sufficient information to admit or deny the allegations in Paragraph 132, and therefore denies the same.

133. Trevari lacks sufficient information to admit or deny the allegations in Paragraph 133, and therefore denies the same.

134. Denied.

**DEFENDANT'S SECOND COUNTERCLAIM AGAINST ALL PLAINTIFFS
FOR BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

135. Plaintiffs reallege and incorporate by reference the responses of the preceding Paragraphs 121 – 134 of Defendant's Counterclaims as though fully set forth herein.

136. Denied.

137. Denied.

138. Denied.

DEFENDANT'S THIRD COUNTERCLAIM

139. Paragraph 139 of Defendant's Counterclaims is removed, and is therefore moot.

DEFENDANT'S FOURTH COUNTERCLAIM

140. Paragraph 140 of Defendant's Counterclaims is removed, and is therefore moot.

DEFENDANT'S FIFTH COUNTERCLAIM AGAINST ALL PLAINTIFFS
FOR MISREPRESENTATION PURSUANT TO 17 U.S.C. § 512 (f)

141. Plaintiffs reallege and incorporate by reference the responses of the preceding Paragraphs 121 – 140 of Defendant's Counterclaims as though fully set forth herein.

142. Denied.

143. Paragraph 143 calls for a legal conclusion to which no response is required. To the extent a response is required, Plaintiffs deny any such allegation in Paragraph 143.

144. Denied.

145. Denied.

146. Plaintiffs admit to the extent that the six videos listed in Exhibit E to the Amended Complaint filed on February 21, 2024 are subjects of the instant action and deny all remaining allegations in Paragraph 146.

147. Denied.

148. Denied.

DEFENDANT'S SIXTH COUNTERCLAIM AGAINST TREVARI
FOR COPYRIGHT CANCELLATION

149. Trevari realleges and incorporates by reference the responses of the preceding Paragraphs 121 – 148 of Defendant's Counterclaims as though fully set forth herein.

150. Denied.

151. Paragraph 151 calls for a legal conclusion to which no response is required. To the extent a response is required, Trevari denies any such allegation in Paragraph 151.

152. Paragraph 152 alleges a remedy Defendant seeks from the Court, to which no response is required. To the extent a response is required, Trevari denies any such allegation in Paragraph 152.

**DEFENDANT'S SEVENTH COUNTERCLAIM AGAINST DEFENDANTS [SIC] FOR
MISAPPROPRIATION OF NAME AND LIKENESS**

153. Plaintiffs reallege and incorporate by reference the responses of the preceding Paragraphs 121 – 152 of Defendant's Counterclaims as though fully set forth herein.

154. Denied.

155. Denied.

156. Denied.

157. Admitted in part, denied in part. Admitted that archived Plaintiffs' footage Defendant appears in is used in part in some advertisements, denied as to the rest of the allegations in Paragraph 157.

158. Denied.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Paragraph 163 alleges that Defendant seeks a remedy from the Court, to which no response is required. To the extent a response is required, Plaintiffs deny any such allegation in Paragraph 163.

164. Paragraph 164 alleges that Defendant seeks a remedy from the Court, to which no response is required. To the extent a response is required, Plaintiffs deny any such allegation in Paragraph 164.

165. Denied.

DEFENDANT'S EIGHTH COUNTERCLAIM

166. Paragraph 166 of Defendant's Counterclaims is removed, and is therefore moot.

PRAYER FOR RELIEF

167. Plaintiffs deny that Defendant is entitled to the relief he seeks in his Prayer for Relief.

GENERAL DENIAL

168. Plaintiffs further deny each allegation contained in Defendant's Second Amended Counterclaims that is not specifically admitted, denied, or otherwise responded to in this Answer.

AFFIRMATIVE DEFENSES

169. Plaintiffs assert the following affirmative defenses in response to Defendant's Second Amended Counterclaims, without intending to shift to itself any burden with respect to any such defenses to the extent that Plaintiffs do not bear such burden under applicable law. Plaintiffs expressly reserve the right to amend and/or supplement their Affirmative Defenses as additional information becomes available:

FIRST DEFENSE
(Estoppel)

170. Defendant, by his own acts and omissions, is estopped in whole or in part from asserting his claims, because Plaintiffs relied on representations made by Defendant which representations confirmed he would not use the video footage at issue without Plaintiffs' authorization.

SECOND DEFENSE
(Equitable Estoppel)

171. Defendant is barred, estopped and precluded from recovery herein pursuant to the doctrine of equitable estoppel.

THIRD DEFENSE
(Waiver)

172. Defendant has waived his claims, because, *inter alia*, Defendant expressly allowed Plaintiffs to use the video footage used in window breaker advertisements in the manner they did.

FOURTH DEFENSE
(Laches)

173. Defendant's claims are barred in whole or in part under the doctrine of laches. In particular, Defendant's request for injunctive relief related to the copyright and misappropriation of name and likeness claims should be denied based on his delay in asserting claims against Plaintiffs' videos.

FIFTH DEFENSE
(Unclean Hands)

174. Defendant's claims are barred in whole or in part under the doctrine of unclean hands because Defendant engaged in misconduct of, among other things, using Plaintiffs' videos outside the scope of the granted authorization, which in turn necessitated Plaintiffs to request YouTube to cease Defendant's authorized use of the videos online.

SIXTH DEFENSE
(Authority)

175. Defendant's claims are barred because he authorized and ratified the conduct which he now claims caused damage.

SEVENTH DEFENSE
(Unjust Enrichment)

176. Defendant's claims are barred because he would be unjustly enriched if allowed to recover on any claim set forth in his Counterclaims.

EIGHTH DEFENSE
(Consent)

177. Defendant's claims are barred to the extent that he consented to and approved the acts and omissions about which he now complains.

NINTH DEFENSE
(Fair Use)

178. Defendant's claims are barred because any use by Plaintiffs of copyrighted

materials constituted Fair Use under 17 U.S.C. § 107.

TENTH DEFENSE

(Actual License)

179. To the extent Plaintiffs were obligated to obtain a license for use of any footage or use of Defendant's name and likeness, Defendant provided such a license.

ELEVENTH DEFENSE

(Implied License)

180. Plaintiffs contend that they are not liable for copyright infringement, or misuse of name and likeness, because Defendant granted Plaintiffs an implied license to said copyright, and name and likeness.

TWELFTH DEFENSE

(Fraud in the Inducement)

181. Defendant represented that he would only use the video footage at issue upon authorization from Plaintiffs, and pursuant to the permitted story telling structure required by Plaintiffs known as "Behind the Scenes." Defendant had no right to deviate from this. However, Defendant knew that his representations were not true, as he published the videos complained of in the First Amended Complaint both during his employment with Plaintiffs, and after his departure. Defendant made the representations to persuade Plaintiffs to agree to the contracts alleged in the First Amended Complaint. Plaintiffs reasonably relied on these representations, and would not have entered into the contracts if they had known that the representations were not true. As such, the contracts which provided Defendant the right to any use of the video footage were never created.

THIRTEENTH DEFENSE
(Third Parties)

182. Any loss, injury, or damage sustained by Defendant was caused by the acts or omissions of entities or persons other than Plaintiffs or their employees.

FOURTEENTH DEFENSE
(Failure to State a Claim)

183. Removed.

FIFTEENTH DEFENSE
(Failure to Mitigate)

184. Some or all of Defendant's claims are barred or reduced by his failure to mitigate his damages.

SIXTEENTH DEFENSE
(Adequacy of Monetary Relief)

185. Some or all of Defendant's claims fail to demonstrate the inadequacy of monetary relief.

SEVENTEENTH DEFENSE
(Innocent Intent)

186. Removed.

Dated this 7th day of May, 2025.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Nika Aldrich
Michael A. Cohen, OSB #965776
Nika Aldrich, OSB #160306

David Ludwig, (*pro hac vice*)
Email: dludwig@dbllawyers.com
Thomas Dunlap, (*pro hac vice*)
Email: tdunlap@dbllawyers.com
Jason Witten, (*pro hac vice*)
Email: jwitten@dbllawyers.com
DUNLAP, BENNETT & LUDWIG, PLLC
211 Church St. SE
Leesburg, VA 20175
Telephone: 703-777-7319
Facsimile: 703-777-3656

*Attorneys for Plaintiffs/
Counter-Defendants*